Book review: Regulating Dispute Resolution. ADR and Access to Justice at the Crossroads. Felix Steffek and Hannes Unberath (eds) in coop. with Hazel Genn, Reinhard Greger and Carrie Menkel-Meadow. Oxford & Portland, Ore: Hart 2013

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This is a copy of the final published version of a book review published in *Rabels Zeitschrift für ausländisches und internationales Privatrecht = The Rabel Journal of Comparative and International Private Law,* Volume 80, Number 3, July 2016, pp. 709-712. It is available online from the publisher at:

http://dx.doi.org/10.1628/003372516X14672884720699

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Regulating Dispute Resolution. ADR and Access to Justice at the Crossroads. Ed. by *Felix Steffek* and *Hannes Unberath* in coop. with *Hazel Genn, Reinhard Greger* and *Carrie Menkel-Meadow*. – Oxford & Portland, Ore: Hart 2013. XXXVI, 454 p.

This volume is divided into two parts. Part 1 (Fundamental Issues, pp. 3–12) introduces guidelines for a value-based and coherent regulation of dispute resolution, for ADR and court proceedings. It further provides the taxonomy of principled regulation of dispute resolution. Part 2 (Regulation of Dispute Resolution, pp. 63–454) offers an international and comparative overview of the regulation of dispute resolution in twelve jurisdictions around the world. This allows the authors to draw comparisons about policy choices, regulatory strategies and the practice of conflict resolution.

The discussion of transnational principles of regulating dispute resolution having just started, the book aims to contribute to the understanding and development of the legal framework governing national and international dispute resolution (p. vii). The overall perspective of the book is to showcase a novel approach to categorizing dispute resolution mechanisms from the perspective of the individuals as parties to the dispute. Thereby, overcoming the diversity of complex national and institutional approaches, the argument for a classification of basic mechanisms of dispute resolution is provided.

The book introduces a unique approach to dispute resolution. Through the lens of the individual a functional taxonomy of dispute resolution mechanisms is developed. The argument for *normative individualism* as starting point for the taxonomy is very persuasive and well-reasoned. This review focuses on the parallels of individual interest and perceived fairness in the creation of the functional taxonomy of dispute resolution and its translation into law making. For this purpose, chapter three "Principled Regulation of Dispute Resolution: Taxonomy, Policy, Topics" (pp. 33–61) is examined.

Chapter three introduces the overall research questions and presents the reader with three aims that are developed in the chapter: First, a principle-based regulation of dispute resolution; second; a methodological basis for those principles; and third; a meaningful contribution of such principles to law-making and standard setting in dispute resolution. All these aims hold true, the author argues, across jurisdictions and cultures.

This chapter untangles complex and diverse combinations of procedures that are covered under the umbrella of alternative dispute resolution today (35). Through breaking down these procedures into functional parts (as opposed to technical understanding of the law) the author proposes to develop transnational principles of regulation of dispute resolution. Here, in identifying these functional parts, the individuals' interest and understanding is the starting point. In other words, the functional approach reflects reality, facilitates transnational arguments and draws on the functional method of comparative law (35). This means that a whole complex structure of dispute resolution is reduced to its functional parts to create a matrix from the perspective of the parties. The taxonomy is based on the matrix of dispute res-

olution mechanisms and aims to anchor regulation to produce systematic law making and standard setting (36).

The main contribution of this proposed matrix and its resulting taxonomy is that it is based on the proposition of normative individualism. This approach places the individuals' interest as the starting point for all considerations. This is a refreshing theory and helps to identify similarities and differences in dispute resolution mechanisms in different contexts. What about its application to everyday encounters with the dispute resolution system? How would this taxonomy translate into individuals' interests and perceptions of an alternative dispute resolution context – is there an empirical basis?

The author argues that comparing the functions of dispute resolution mechanisms and their regulation in different settings helps to reveal their core characteristics (39). These characteristics refer to function and not to law. Breaking down complex structures to reveal their functions and classify them helps build theory and understand elements of complexity. This complexity is even more encouraged by no common understanding, and use of, dispute resolution terminology (39). These factors, taken in their functional building blocks, have to be reconstructed to create and understand the context of any alternative dispute resolution setting in practice. Here, empirical evidence suggests that parties to a conflict, having the choice of which type of dispute resolution mechanism to go for, do not understand the difference. This is where the theory of self-determination of the individual, as part of the normative individualism theory, needs to be tailored to fit everyday practice. (This might happen through regulation.)

Empirical research into the dispute resolution procedures of an ombudsman model has shown[1] that, if parties to a dispute are asked what they expect from an ombudsman, and if they can identify dispute resolution methods used, most participants to a dispute rely on a third party (ombudsman) to sort it out rather than questioning how this will happen. The author suggests that there should not be a state preference of one dispute resolution mechanism over another; and he holds that the self-determination of the individual as regards the resolution for conflicts places the responsibility for conflict resolution with the individual (45). This sounds plausible in theory, yet looking at empirical evidence, it would need a huge amount of education, signposting and awareness of those options to the people accessing alternative dispute resolution. Here the developed taxonomy might be beneficial to identify a common language that can be then transferred into wording for standards and rules (40).

The use of the concept of normative individualism as theoretical starting point resonates with findings of individuals' perceptions of fairness in alternative dispute resolution procedures. Research has found that despite different types of disputes and variations of resolution models by jurisdiction, in-

[1] *Naomi Creutzfeldt*, How Important Is Procedural Justice for Consumer Dispute Resolution?, A Case Study of an Ombudsman Model for European Consumers, Journal of Consumer Policy 37 (2014) 527–546; *idem*, ■where, forthcoming?■.

dividual perceptions of fairness of these procedures can be broken down into basic categories.[2] These categories then, similar to the approach taken in creating the taxonomy, can help break through national and jurisdictional boundaries and inform the creation of policy and regulation.

However, despite the well-reasoned argument in this chapter of just law based on individuals, the practical translation might be challenging. Regulating dispute resolution practices is a complex task, especially as life is not coherent or systematic. Therefore, the proposed approach to principled regulation of dispute resolution at the local, regional and transitional level is highly desirable but it's execution in practice challenging. Having said that, the connection of theory and empirical evidence of individual perceptions provides a fruitful learning ground for informing both institutional and regulatory insight to provide better dispute resolution.

Overall, the book is very ambitious and distinctive in its offering of a taxonomy to inform principled regulation across jurisdictions. It has successfully provided a refreshingly new lens to view the very important issues of regulating dispute resolution that have a substantive impact. The lineup of 12 jurisdictions and their differences / similarities provided in part 2 of the book ■(pp. 63–454 with contribution by *Peter G. Mayr* and *Kristin Nemeth*, Austria; *Ivan Verougstraete*, Belgium; *Lin Adrian*, Denmark; *Hazel Genn*, *Shiva Riahi* and *Katherine Pleming*, England and Wales; *Frédérique Ferrand*, France; *Burkhard Hess* and *Nils Pelzer*, Germany; *Giuseppe De Palo* and *Ashely E. Oleson*, Italy; *Shusuke Kakiuchi*, Japan; *Machteld Pel,* Netherlands; *Anneken Kari Sperr*, Norway; *Isaak Meier et al*., Switzerland; *Carrie Menkel-Meadow*, United States of America)■ provide excellent overviews of dispute resolution mechanisms and reinforce the significance and contribution of this book overall – a starting point through a common set of principles for dispute resolution, from an individual perspective.

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[2] ■Please provide missing references■.